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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 320.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF AMERICAN MERCHANT MARINE INSTITUTE, INC., *AMICUS CURIAE.*

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THE COURT PRESS, N. Y. C.

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BRIEF OF AMERICAN MERCHANT MARINE INSTITUTE, INC., *AMICUS CURIAE.*

Authority for Submission.

This brief is filed on behalf of the American Merchant Marine Institute, Inc. (hereinafter called the "Institute"), as *amicus curiae* herein, pursuant to Rule 27, paragraph 9. The written consents of all the parties hereto have been filed with the Court.

The Institute is a representative association of American steamship owners and operators, numbering 44 members and operating 3,701,933 gross tons of all types of American Flag ships in the foreign and coastwise deep-sea trades.

Scope of This Brief.

The sole concern of the Institute in this case is the effect of the majority opinion of the court below upon the maintenance of discipline on shipboard as governed by maritime law. Objection is made to so much of its decision as sustains that part of the order of the National Labor Relations Board requiring reinstatement of seamen who were discharged by Petitioner after having engaged in a sit-down strike on board Petitioner's vessel, *City of Fort Worth*, at Houston, Texas, on July 18, 1938. The Institute, representing the shipping industry generally, is not concerned with those issues of the case with respect to the propriety of the certification of the collective bargaining agency or any alleged unfair labor practices of the Petitioner prior to such sit-down strike. This brief will show that a broad question of public interest has been erroneously decided by the court below to the detriment of the future of the American merchant marine.

Question Presented.

Whether the conduct of the crew of a vessel of the United States who, in breach of their agreement in the Shipping Articles to obey the commands of the master, engage in a sit-down strike on board the vessel, is such unlawful conduct as to justify their subsequent discharge and to deprive the National Labor Relations Board of authority, under the National Labor Relations Act, to order their reinstatement.

The Decision Below.

The court below erroneously answered the question (120 F. (2d) 505) in the negative when the strike occurred in an alleged "safe" domestic port. The basis of its

decision may be stated in the words of the majority opinion (p. 510):

> "It is, therefore, clear that upon authority the question of the right of seamen to strike under the circumstances of the case before us is still an open one. Upon reason, however, we think that there is no sound basis for depriving seamen of this right to strike when, as here, their vessel is moored to the dock in a safe domestic port. * * *
>
> It must be concluded, we think, that when a vessel is safely moored in a domestic port the maritime law does not require the denial to seamen of the right to strike which is now freely accorded their fellows who labor on the land."

The court below seems to have conceded, and the Board likewise, that a strike of the crew of a vessel when at sea, or in a port of a foreign country, or in an "unsafe" domestic port, is such unlawful conduct in contravention of applicable maritime law as to justify the discharge of the participants in the strike (p. 509).

Circuit Judge Clark, dissenting, considered unsound the distinction of the majority between the standard of duty required of the crew of a vessel when not "safely moored in a domestic port" and the absence of such standard when so moored.

Statutes Involved.

The statutes here involved are the National Labor Relations Act (29 U. S. C., Secs. 151-166), and particularly Sections 7 and 8 thereof, and the following section of the Criminal Code:

> Section 292 (18 U. S. C., Sec. 483). Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the

admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000, or imprisoned not more than five years, or both.

Statement.

The facts have been sufficiently stated in the brief for Petitioner and need not be repeated here.

Prior to argument on the specific question here involved, it should be pointed out that the rights of American seamen and their correlative duties are governed by a complex and thorough system of maritime law, most of which is statutory. Under this system the employee status of seamen is unique. Induction into the relationship begins with the signing of Shipping Articles.

Shipping Articles constitute the written contract of employment of the crew. The procedure under which the crew is "signed on" (employed) and "signed off" (discharged), and the form of the Articles themselves, are carefully prescribed by the Congress.[1] Seamen must sign on in the presence of the master of the vessel and of a Shipping Commissioner (in domestic ports) or consular officer (in foreign ports).[2] The following stipulation,

[1] 46 U. S. C., §713.
[2] 46 U. S. C., §§564, 565, 570; 22 U. S. C., §74.

contained in the Articles, must be read to the crew when signing on:[3]

> "And the crew agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be *at all times* diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, *whether on board, in boats, or on shore;* * * * It is also agreed that if any member of the crew considers himself to be aggrieved by a breach of the agreement, or otherwise, he shall represent the same to the Master or other officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require * * *." (Italics supplied.)[4]

The term of the Articles must be specific. They may be for a stated period within certain voyage limits, or for a stated voyage.[5]

The statutory formalities and requirements above described are but part of the elaborate scheme under which seamen are intended to be protected against abuse or their own indiscretions, the dangers of which were more apparent in a by-gone [illegible], but which today are hardly apparent or real.

Once having "signed on" in the service of the ship, seamen are automatically clothed with many benefits. They are protected as to the quality and quantity of food and drink (46 U. S. C., Sec. 713); living quarters (46 U. S. C., Sec. 660a); minimum manning and wage scales

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[3] 46 U. S. C., §§565, 713.

[4] On receiving certificates as seamen they must take an oath faithfully to obey lawful commands of superior officers "on shipboard". 46 U. S. C., §672(g).

[5] 46 U. S. C., §§564, 565, 570.

(46 U. S. C., Sec. 1131); clothing and heat (46 U. S. C., Sec. 669); hours of labor and division of watches (46 U. S. C., Sec. 673); seaworthiness of the vessel (46 U. S. C., Secs. 654, 658, 659) and in many other respects touching their daily lives and labor. They receive, under the general maritime law, one of the earliest forms of workmen's compensation, known as the right to "maintenance and cure", when they are injured or fall ill while in the service of the ship. This is in addition to a right of action for damages when there has been negligence on the part of the vessel or fellow crew members, and despite their own contributory negligence or assumption of risk.[6]

In general, seamen have been for centuries regarded as the "wards of the admiralty" and have also been called "wards of the legislature".[7]

While thus the recipients of benefits not common to shore labor, seamen must of necessity be called upon to recognize correlative duties necessary in the maritime service. These duties involve, to a limited extent, the surrender of certain personal liberties and require that the seamen, while engaged in the service of the vessel, must at all times be amenable to and carry out the lawful commands of the master,[8] even as the vessel is at all times subject to perils of fire, the elements and other ever present maritime hazards.

Summary of Argument.

It was conceded both by the court below and the Board that if the discharge of the seamen in question was justified the National Labor Relations Act gives the Board no authority to order their reinstatement; it was conceded that violation by members of the crew of the statute

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[6] The Osceola, 189 U. S. 158 (1902); 46 U. S. C., §688.

[7] Robinson on Admiralty (1939) 283.

[8] U. S. Maritime Commission, Economic Survey of the American Merchant Marine, p. 46. H. Doc. No. 392, 75th Cong., 2d Sess. (1937); see Robertson v. Baldwin, 165 U. S. 275 (1897).

prohibiting attempts to make a revolt (18 U. S. C., Sec. 483) would constitute sufficient justification for their discharge; it was further conceded by the court below that a sit-down strike, such as in this case, occurring at sea or in an "unsafe" port, would be violative of the statute. This brief, therefore, is limited to the following points:

1. The statute (18 U. S. C., Sec. 483) requiring obedience on the part of the crew of a vessel of the United States specifically extends to all waters within the admiralty and maritime jurisdiction of the United States and no room exists for distinction therein between so-called "safe domestic ports" and other waters within such jurisdiction.

2. Even if it be conceded that determination of the scope of the statute is subject to "reason", reason itself clearly indicates the necessity of holding applicable the statutory prohibitions regardless of where, within the admiralty and maritime jurisdiction of the United States, the vessel may be.

3. Irrespective of the existence of such statutory prohibition the conduct of the crew in this case was such as to warrant their discharge.

Argument.

I.

The statute requiring obedience on the part of the crew of a vessel of the United States specifically extends to all waters within the admiralty and maritime jurisdiction of the United States and no room exists for distinction therein between so-called "safe domestic ports" and other waters within such jurisdiction.

The relevant parts of this statute, set forth in full at page 5, *supra*, are: "Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, * * * solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel or to refuse or neglect their proper duty on board thereof, * * * shall be fined not more than $1,000, or imprisoned not more than five years, or both" (18 U. S. C., Sec. 483).

There can be no question, and no question was raised below, but that those seamen discharged by the petitioner did solicit, incite or stir up others of the crew to disobey or resist the lawful orders of the master or other officers of the *City of Fort Worth*, or to refuse or neglect their proper duty on board thereof. The court below says that because such conduct occurred in a "safe domestic port" it is not within the purview of the Act. In so holding it completely ignored the plain statutory language making the offense punishable whether it occurs on "the high seas" or on "*any other waters* within the admiralty and maritime jurisdiction of the United States". Clearly the port of Houston, Texas, is wit[illegible]n

such jurisdiction and the vessel and its crew on board when tied to a pier there are subject to such jurisdiction.[9]

It should be unnecessary to go beyond the words of the statute. No previously adjudicated case, however, has held the statute inapplicable because of the location of the vessel at the time—whether on the high seas, in a foreign or domestic port, or in a safe or unsafe port.[10] The cases are adequately covered in Petitioner's brief.

It has been claimed that the cases applying the statute to conduct on board a vessel in a United States port are the relics of a by-gone era and should give way to modern social concepts. It is submitted, however, that such changes are the functions of Congress, and that the court below erred in taking upon itself the modification of the criminal statutes of the United States to accord with its views of present day social policy. It will be shown in Point II of this Argument that present day social policies do not indicate the desirability of any such change in the law but on the contrary that the necessities of modern

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[9] The Daniel Ball, 77 U. S. 557 (1871); The Genesee Chief, 45 U. S. 465 (1851); Ex Parte Boyer, 109 U. S. 629 (1884); ROBINSON ON ADMIRALTY, §7. That the port of Houston, Texas, specifically is within such jurisdiction see The Ditmar Koel, 65 F. (2d) 555 (C. C. A. 5th, 1933).

[10] United States v. Albers, 115 F. (2d) 833 (C. C. A. 2d, 1940) while vessel at Colombo, Ceylon; Rees v. United States, 95 F. (2d) 784 (C. C. A. 4th, 1938) at Montevideo; Hamilton v. United States, 268 Fed. 15 (C. C. A. 4th, 1920), cert den. 254 U. S. 645, at Bermuda; United States v. Bennett, Fed. Cas. No. 14,576 (D. Md. 1877) at Garonne River near Bordeaux; United States v. Cassedy, Fed. Cas. No. 14,745 (C. C. Mass. 1837) at St. Helena; United States v. Gardner, Fed. Cas. No. 15,188 (C. C. Mass. 1829) at Boston Harbor; United States v. Hamilton, Fed. Cas. No. 15,291 (C. C. Mass. 1818) at Salem, Massachusetts; United States v. Keefe, Fed. Cas. No. 15,509 (C. C. Mass. 1824) at foreign port; United States v. Seagrist, Fed. Cas. No. 16,245 (S. D. N. Y. 1860) at Palermo, Sicily; United States v. Staly, Fed. Cas. No. 16,374 (C. C. R. I. 1846) at Providence River, R. I.

ship operation require more vigilant attention to their duties on the part of the crew than in the earlier years of the last century.

After the decision of the Circuit Court of Appeals in the *Algic* case (*Rees* v. *United States*, 95 F. (2d) 784 (C. C. A. 4th, 1938)) attempts were made to induce Congress to amend this statute. Examples of such attempts are H. R. 3427 and H. R. 3428, 76th Congress, 1st Session (1939), which were bills to limit the locus of the crimes of revolt and of attempt to revolt to vessels "under way on the high seas".

The United States Maritime Commission in submitting a report on these bills to the House Committee on Merchant Marine and Fisheries, pursuant to request, stated its opinion that the present law is applicable to the proscribed misconduct on American vessels wherever located and recommended that the bills do not pass. This report was submitted without objection of the Acting Director of the Bureau of the Budget and under well known government practice is therefore deemed to be consistent with the program of the President. The report is an official record of the House Committee on Merchant Marine and Fisheries and is set forth in full in the Appendix to this brief as a document which will merit the interest and attention of the Court. Needless to say the bills did not pass.

Congress, in amending the Merchant Marine Act, 1936, to create the Maritime Labor Board for the mediation of labor disputes (46 U. S. C., Sec. 1251-1262), specifically provided "that nothing in this title shall constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen."[11]

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[11] 46 U. S. C. §1252. "If this means what it says, the mutiny provisions invoked in the Algic case (Rees v. United States, supra) are still law." ROBINSON ON ADMIRALTY, 353.

Since the plain words of the statute make punishable the offense of attempting to make a revolt on a vessel of the United States, wherever located, without excluding "safe domestic ports"; since no prior adjudication of this statute has recognized such limitations, and since Congress has refused to enact into law the limitation proposed by the court below, the Court should hold that the discharge of the seamen involved was fully justified.

II.

Even if it be conceded that the determination of the scope of the statute is subject to "reason", reason itself clearly indicates the necessity of holding applicable the statutory prohibitions regardless of where, within the admiralty and maritime jurisdiction of the United States, the vessel may be.

The majority of the court below, after rejecting the previously decided cases and passing over the clear language of the statute making the offense cognizable on "any waters within the admiralty and maritime jurisdiction", considered the question before it an open one and arrived at its conclusion on "reason". The basis of its reason was that the disobedience of the crew to the orders of the master did not prejudice the safety of the vessel because she was "moored in a safe domestic harbor". While it is submitted the court was bound by the plain language of the statute and therefore the question before it was not subject to a decision based on "reason" alone, nevertheless, even assuming the question should be so determined, reason will show that the court's conclusion was in error.

It is fundamental that:

"A ship that is not manned by a competent crew is unseaworthy." *Peninsular and Occidental S.S. Co.* v. *Na-*

tional Labor Relations Board, 98 F. (2d) 411, 414, 415 (C. C. A. 5th, 1938) (cert. den. 305 U. S. 653, 1938), citing *Propeller Niagara* v. *Cordes*, 62 U. S. 7 (1858). As the court said in the *Peninsular & Occidental* case:

> "It would be difficult to imagine any greater grounds of incompetency than disobedience to the lawful orders of the master and the possibility of mutiny. It would be gross negligence for a vessel to put to sea with that kind of crew • • • therefore, it cannot be said that it was not a necessary measure for the safety of the ships that the company should discharge the entire crews and replace them with other crews that would not be torn by dissension and probably be mutinous" (p. 415).

And see *Texas Co.* v. *National Labor Relations Board*, 120 F. (2d) 186 (C. C. A. 9th 1941).

In *New York and Cuba Mail S. S. Co.* v. *Continental Insurance Co.*, 117 F. (2d) 404 (C. C. A. 2d, 1941) (cert. den. 313 U. S. 580), the owners of the ill-fated *Morro Castle* were denied indemnity from their underwriters for liabilities incurred in consequence of loss of life and other damages resulting from that disaster, because of their neglect to provide proper watches, hold fire and boat drills while in port, or properly to prepare the men and equipment for the emergency of fire.

The Maritime Commission, in its report, dated March 27, 1939, to the House Committee on Merchant Marine and Fisheries (see Appendix), specifically recognized the necessity of an alert and responsive crew:

> "The fact that a vessel may be in a safe harbor does not, under existing law, and it is submitted, should not, give sanction to the offenses covered by the

mutiny statutes. It is apparent to all those familiar with the sea that no vessel is safe unless she is, among other things, manned by a competent crew which means, in short, a crew alert to its duties and responsive at all times to the lawful commands of the master. A crew which does not meet this test is not competent and must, moreover, be lacking in that morale which is necessary to the safe preservation of the ship, her passengers and cargo. Because of the human factor involved, it is difficult to see how the morale of a crew which feels that it should be free to disobey the lawful commands of the master when the vessel is not 'under way on the high seas', can be revived with automatic regularity when the ship weighs anchor or crosses an imaginary line to the high seas."

Maritime records are replete with incidents of damage and disaster occurring to vessels while anchored in apparently "safe" harbors and moored to docks in apparently "safe" ports.[12]

Recent regulations of the Bureau of Marine Inspection and Navigation, Department of Commerce (Bureau Memorandum dated December 10, 1941) contain instructions to ship operators "regarded as the minimum proper steps to be taken for the protection of ships at berth or anchored * * * designed to cover the average cargo vessel and tanker, * * *." These instructions include the following:

"1. Efficient continuous watches should be maintained both day and night by a deck officer and an engi-

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[12] S. S. Panuco, caught fire while tied to dock at Brooklyn, New York, on September 18, 1941, N. Y. Times, Sept. 19, 1941.

S. S. Pocone, fire while tied to dock at New York on January 1, 1942. N. Y. Times, Jan. 2, 1942.

S. S. Lancaster, averted disaster by putting into stream when fire destroyed pier, New York harbor, January 8, 1942, N. Y. Times, Jan. 9, 1942.

neer officer. The night relief officers should remain actually on watch and make tours of the decks, superstructure, cargo spaces where cargo is being worked, boiler rooms, engine rooms, and machinery spaces at irregular, but sufficiently frequent intervals, to check on conditions and actions of ship and shore personnel.

• • •

7. Steam should be maintained on at least one boiler on steam-powered ships to provide light and fire protection. Fire pumps, fire mains and fire detection equipment should not be dismantled or disabled without the permission and knowledge of the officer in charge of the ship and the engineer on duty."

Many other precautionary measures, governing procedure during war or national emergency, are listed. Obviously no vessel whose crew is engaging in a sit-down strike could comply with these requirements. The Department's circular contains an excerpt from a letter to the Secretary of Commerce from the Secretary of the Navy, dated November 25, 1941, laying emphasis on the fact that major efforts "for safeguarding shipping must be concentrated *in the harbors and ports* frequented by such shipping." (Italics supplied.)

A vessel must be ever ready, with a competent crew, to act in an emergency. Even in normal times a vessel at anchor in a "safe" port must be prepared for emergencies, for example, to veer anchor chain if collision with another vessel seems imminent; or to drop additional anchors to prevent dragging into other vessels.[13] This requires an attentive crew to man the anchor windlass and other mechanisms of the ship. A vessel at dock must be ever

[13] FARWELL, THE RULES OF THE NAUTICAL ROAD, Sec. 114, p. 236 (U. S. Naval Institute, 1941).

alert to the danger of fire spreading from the pier, or to prevent fire on the vessel from spreading to the pier or to other vessels. In the circumstances steam must be maintained and a competent crew ready and alert to man the fire pumps and apparatus, to free the lines and hawsers, or cut them on a moment's notice if necessary, and to do innumerable other similar tasks incident to ordinary seamanship. In this the personnel of the vessel must act as a team. *Texas Co.* v. *National Labor Relations Board*, *supra*.

None of the authorities relied upon by the court below controvert the foregoing principles, nor do they support the court's conclusion either in reason or in law. Decisions relied upon were: *Weisthoff* v. *American Hawaiian Steamship Co.*, 79 F. (2d) 124 (C. C. A. 2d, 1935) (cert. den. 296 U. S. 619, 1935); *Black Diamond Steamship Co.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d, 1938) (cert. den. 304 U. S. 579, 1938); *The Blake*, 1 W. Rob. 73, 166 Eng. Rep. 500 (1839); *The South Portland*, 111 Fed. 767 (D. Wash. 1901).

The inapplicability of the *Weisthoff* case has been pointed out in the brief for the Petitioner. Whatever implications might have been drawn from it as to the right of seamen to strike on shipboard have been disposed of by the later decision of the same circuit in *United States* v. *Albers*, 115 F. (2d) 833 (C. C. A. 2d, 1940). The same may be said for *Black Diamond Steamship Co.* v. *National Labor Relations Board*, *supra*, although how any such implication could be derived from that case is difficult to see.

The Blake, *supra*, decided by Dr. Lushington in the former English High Court of Admiralty, involved a suit by a mariner for wages earned while a member of the crew of a vessel for a period of twenty-two months. During the course of the voyage, on November 3, 1838, a

Saturday night, while the vessel was in St. Helena, the plaintiff with several other members of the crew engaged in a drinking bout and became intoxicated. At four-thirty the next morning they were ordered by the master, whose predecessor had admittedly set the crew "the worst possible example", to heave anchor, and, being still in a state of intoxication, they refused to obey his orders (p. 87). The plaintiff, a very short time thereafter, returned to work and discharged his duties for the remainder of the voyage. Under the then English law the court was faced with the alternative of depriving the plaintiff of his entire wages for the twenty-two month period, for a single act of disobedience while under the influence of liquor, and with contributing causes, or allowing him his wages in full (p. 74). Acting on equitable principles, the court granted full wages.[14] The conduct of the seaman was no more than a single unpremeditated act of disobedience while under the influence of liquor, as distinguished from a wilful, concerted action depriving the master of his authority and refusing his lawful commands.

The South Portland, *supra*, also cited by the court below, has no bearing on the issues here involved. It merely sustains the proposition which has long been the law: that seamen may not be imprisoned for refusing to

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[14] In its decision the court said:

> "I do not mean, by any of the observations I have made, to extenuate or excuse the misconduct of which the mariner has been guilty. His conduct has been most culpable, and I should rejoice much if the English law gave me the power of muleting him of a part of his wages as a punishment for his misbehaviour; * * * that great insubordination prevailed on board the vessel, is clearly proved. At the same time, it is to be observed, that it was only upon one occasion; when the crew were in a state of inebriety, and when the inebriety had been altogether unchecked by the master and officers on board" (p. 88).

sail with the vessel. Such would constitute involuntary servitude.

In support of its conclusion the court noted "that students of the subject had reached the same conclusion." The "students of the subject" cited were Messrs. Rothschild (*The Legal Implications of a Strike by Seamen*, 45 YALE L. J. 1181 (1936); Sapiro and Frank (*Mutiny at the Dock*, 25 CAL. L. REV. 41 (1936)). These law review articles are scarcely the result of unbiased study[15] but were obviously written on behalf of persons interested in this and other litigation or in legislation.

Since the authorities upon which the court below relied are inapplicable or unworthy of confidence, since a modern vessel is never safe, and since it cannot be expected that a crew undisciplined in port will be disciplined at sea, the Court should hold that reason, if it may be considered, requires the application of the statute in the circumstances of this case.

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[15] Mr. Rothschild's article in the Yale Law Journal states that it was prepared at the instance of the International Juridical Association and with the assistance of the editor of its Monthly Bulletin, in which it concurrently appeared, Vol. 4, No. 11A, p. 1 and No. 12, p. 4, in May and June, 1936. The International Juridical Association is affiliated with the International Labor Defense and other organizations which, according to the "Dies Committee", are directed by the Communist Party. H. Rep. No. 1476, 76th Cong., 3d Sess. (1940) p. 9; see Hearings of Special Committee of the House of Representatives on Un-American Activities V. 1, pp. 503, 531, 574.

Mr. Sapiro, co-author of "Mutiny at the Dock", during the year of publication of his article was counsel for the Sailors Union of the Pacific, an organization obviously interested in extending the right to strike. Mr. Sapiro has been disbarred in the federal and state courts of New York on charges of obstructing justice by jury tampering. In the Matter of Sapiro, 101 F. (2d) 1018 (1939); In re Sapiro, 29 N. Y. Supp. 518 (1941).

III.

Irrespective of the existence of such statutory prohibition the conduct of the crew in this case was such as to warrant their discharge.

We have shown under the last point that reasons of safety alone contravene the conclusion reached below and necessitate the application of the revolt statute throughout the admiralty and maritime jurisdiction of the United States. The showing made there that a steamship is never safe, in port or out of port, unless the crew is alert and obediently efficient in the carrying out of necessary commands, is equally controlling, even if there were no statute prohibiting concerted refusal to obey the lawful orders of the master. Reasons of safety in port and at sea still require that the crew be well disciplined and faithful to their Shipping Articles while in port. Discharge of the seamen here was fully justified to assure the continued discipline necessary to safe operation of American vessels and is supported by decisions in the Fifth and Ninth Circuits not relying on the revolt statute.

Thus in *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board, supra,* the Circuit Court of Appeals for the Fifth Circuit said (p. 414):

> "The owners of vessels, their masters and other officers, are required to exercise the highest degree of care and skill for the preservation of the lives of passengers and crews and to safely transport the cargo. This duty is superior to all other considerations in the operation of ships. Implicit obedience to the lawful orders of the master is required on a vessel. Without that there would be no safety. * * * A ship that is not manned by a competent crew is un-

> seaworthy. * * * It would be difficult to imagine any greater grounds of incompetency than disobedience of the lawful orders of the master and the possibility of mutiny. *It would be gross negligence for a vessel to put to sea with that kind of crew.*" (Italics supplied.)

In *Texas Company* v. *National Labor Relations Board*, *supra*, Circuit Judge Denman of the Ninth Circuit, a judge learned in admiralty questions, in upholding a discharge for habitual drunkenness of a labor leader on the tankship *Nevada*, described in detail the hazards of shipboard and navigation generally and the necessity for an obedient and competent crew. He pointed out particularly the dangers of tanker operation (p. 188):

> "It needs but an extreme illustration to make clear our views of the supremacy of the maritime safety laws to those not familiar (as the Board here appears) with the universal hazards of navigation, and particularly in this case, in the management, in port and at sea, of vessels carrying highly explosive and inflammable cargoes of gasoline and oil. Unlike general cargo vessels, the tanker is subject to the dangers of her peculiar cargo in port as well as at sea. In some respects that menace is heightened in loading and discharging."

The Record does not show the nature of the cargo of the *City of Fort Worth* or the dangers inherent therein, but it would be preposterous to vary the standard of duty of a seaman according to the type of vessel involved.

Vessel operators must be able to protect themselves by discharge of incompetent or disobedient seamen, or they may be subjected to actions for damages to passengers or cargo, and their insurance may be vitiated. See *New York*

& Cuba Mail S. S. Co. v. *Continental Insurance Co.*, *supra*, and the quotation from the *Peninsular & Occidental* case, *supra*.

The analogy apparently made by the court below between employment on shore and employment on shipboard (p. 510) is wholly inadequate.[16] Thus the *Texas Company* case, *supra*, points out (p. 187):

> "The duties and obligations of the master of the ship in making up and controlling his crew cannot be determined by the study of the management of, say, a great automobile factory. An automobile factory is not a moving mass of steel floating in the ocean, whose propulsion must be controlled by instant intelligent co-operation of commander and his seamen and engineers while driven through a storm or the obscuration of rain, fog or smoke in heavily traveled shipping lanes or in approaching and passing through narrow channels with cross tidal and river currents, or, as for four years from 1914 to 1918 in the Great War, in the zigzag maneuvers of a convoy, or, steaming alone, in avoiding a submarine or dodging a torpedo,—the latter situations not beyond the reasonable contemplation of the Board at the time of the writing of its briefs and of its argument.
>
> "Nor is the psychology of the workers in a mill, living in their comfortable homes with their families and with diversions of modern town life, the gauge for the seaman's mind, living in necessarily cramped quarters, though vastly improved now through the pressure of their labor organizations, having 16 hours unoccupied time between watches, without the recreations and diversions which come to men living ashore."

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[16] "There is nothing in the [National Labor Relations] Act to indicate that Congress intended to disregard the fact that working conditions of seamen differ from those affecting workers ashore * * *." Rees v. United States, *supra* (p. 792).

Even if the Court ignores the distinction between maritime employment and that ashore, the doctrine of *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240 (1939), would clearly seem to justify the discharge of these seamen. It definitely condemns sit-down strikes; the fact that the crew of the *City of Fort Worth* engaged in no disorderly or violent conduct should not detract from the principle. Their action was in violation of the specific terms of their Shipping Articles and their oath of obedience as seamen (46 U. S. C., Sec. 672(g)); it effectively deprived the master of his control over the vessel and so constituted a constructive seizure of the vessel. See *The Oakmar*, 20 F. Supp. 650 (D. Md., 1937) and *The Losmar*, 20 F. Supp. 887 (D. Md., 1937).

There is even more reason for holding sit-down strikes on board ship illegal in view of the policy of the United States with respect to the merchant marine as stated in the Merchant Marine Act, 1936 (46 U. S. C., Sec. 1101):

> "It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine * * * capable of serving as a naval and military auxiliary in time of war or national emergency * * * and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine."

The United States Maritime Commission in its Economic Survey of the Merchant Marine, *supra*, at page 46, deplored the then existing labor conditions and their aggravation by sit-down strikes, and in its report on H. R. 3427 and H. R. 3428 (see Appendix) stated its conviction

that condonation of such strikes was contrary to this public policy.

Assuming the absence or non-applicability of criminal sanctions upon the concerted disobedience of a crew, the sit-down strike here involved should be condemned and held proper justification for the seamen's discharge since such sit-down strikes *per se* are unlawful and since the immediate and future safety of the vessel, her crew and her cargo were imperiled.

Conclusion.

The Court should condemn as contrary to existing law the conduct of members of the crew of a vessel of the United States who engage in a sit-down strike thereon in a port of the United States or elsewhere in defiance of the lawful orders of the master, and should hold that Petitioner's discharge of the participating crew members was justified and not properly subject to an order of reinstatement by the Board.

Respectfully submitted,

JOHN J. BURNS,
Attorney for American Merchant Marine Institute, Inc., Amicus Curiae.

FRANCIS S. WALKER,
WILLIAM G. SYMMERS,
Of Counsel.

February, 1942.

APPENDIX.

UNITED STATES MARITIME COMMISSION
WASHINGTON

Office of the Chairman

March 27, 1939

Honorable S. O. Bland
Chairman, Committee on Merchant Marine
and Fisheries
House of Representatives

My dear Mr. Chairman:

Under date of February 1, 1939, you requested the views and recommendations of the Commission with respect to H. R. 3427 and H. R. 3428.

H. R. 3427 is a bill "to amend title 18, section 484, United States Code (Criminal Code, sec. 293), an Act entitled 'Revolt or mutiny on shipboard'".

H. R. 3428 is a bill "to amend title 18, section 483, United States Code (Criminal Code, sec. 292), an Act entitled 'Inciting revolt or mutiny on shipboard'".

The following comparative texts will illustrate the changes which the proposed bills would make in the existing law. Underscoring indicates words which would be added by the text of the proposed bill to the existing law, while the words in the existing law which would be omitted from the proposed legislation have been lined out.

The combined comparative text of H. R. 3428 and U. S. C., title 18, section 483, is as follows:

> "Whoever, being of the crew of a vessel of the United States, under way on the high seas, ~~or on any other waters within the admiralty and maritime jurisdiction of the United States,~~ endeavors to make a revolt, or mutiny, or riot on board (thereof) ~~such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny,~~

~~or solicits, incites, or stirs up any others of the crew to disobey or resist the lawful orders of the master or other officers on such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof,~~ or unlawfully confines the master or other commanding officers thereof, shall be fined not more than ~~$1,000~~ ($250) or imprisoned not more than ~~five years~~ (12 months), or both."

The combined, comparative text of H. R. 3427 and U. S. C., title 18, section 484, is as follows:

"Whoever, being of the crew of a vessel of the United States, under way on the high seas, ~~or on any other waters within the admiralty and maritime jurisdiction of the United States~~ unlawfully and with force, ~~or by fraud, or intimidation,~~ usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, ~~or resists or~~ (and) prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than ~~$2,000~~ ($500) and imprisoned not more than ~~ten years~~ (two and one-half) years."

The proposed bills would emasculate the present laws in respect of revolt or mutiny on shipboard. No conduct by members of the crew of a vessel of the United States would constitute a violation of the statutes unless the vessel were under way on the high seas and then only if actual force as distinguished from the lesser degrees of revolt or mutiny involving use of fraud or intimidation were used against the commanding officer. Moreover, the proposed amendments would reduce the maximum penalties by seventy-five per cent.

It is the Commission's considered opinion that there is no reason which would justify the Congress in lessening the authority of the masters on board vessels of the American merchant marine.

Because of these radical changes which would be made in the law relating to discipline on board ship by the proposed measures, a brief discussion of the laws now obtaining is thought pertinent.

Subdivisions 4 and 5 of section 4596 of the Revised Statutes (46 U. S. Code, Sec. 701) provide for the punishment of seamen for the misdemeanor of willful disobedience *at sea*, by imprisonment for not more than one month; and for "continued willful disobedience to lawful command or continued neglect of duty at sea" by imprisonment not more than three months. This statute has been held to relate "to mere ordinary disobedience or neglect of duty by one or several seamen", while Sections 292 and 293 of the Criminal Code (U. S. Code, Title 18, Sections 483, 484), now sought to be amended, cover the more serious offenses of concerted action by the crew amounting to resistance to, or deprivation of, the master's lawful command. (*Hamilton* v. *United States* (C. C. A. 4th 1920) 268 Fed. 15, 20).

The distinction between "mutiny or revolt", a felony, and "willful disobedience at sea", a misdemeanor, is thus clear. Revolt or mutiny implies concerted action by a combination of the crew whereas the lesser offense of "willful disobedience" relates to the isolated wrong of one or at most several members of the crew.

The crimes of endeavoring to incite to revolt or mutiny, or actually accomplishing revolt or mutiny, may be committed "on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States". It is well settled that this includes all such offenses committed on the vessels of the United States on navigable waters, including the ports, rivers and harbors of foreign countries. (*United States* v. *Flores*, 289 U. S. 137).

The lesser offenses of willful disobedience must occur "at sea". In the event of individual acts of disobedience occurring elsewhere than at sea, the master's clear remedy is to discharge the offender, when such action is necessary, in the presence of a shipping commissioner or other duly constituted official. This the master may do without disorder because his lawful command has not been usurped or thwarted by the crew as a whole. Moreover, in port one or several recalcitrant seamen may be replaced without serious danger to the ship or interruption in its service.

The necessity for discipline aboard ship and the need for a central authority to be lodged in one individual, the master, is so fundamental and indisputable that it should require no elaboration here. Doubts in this respect, which had been raised in certain quarters, were dispelled following the unfortunate occurrences on board the SS. "Algic" which culminated in the prosecution, under Section 292, Criminal Code, of certain members of the crew who refused to obey the lawful orders of the master and participated in a "sit-down strike" on board that vessel while she was lying in the harbor of Montevideo, Uruguay, September 10, 1937. As was said in that case by Judge Chesnut in his charge to the jury:

> "The right of laborers, whether under contract or not, to strike on land is not questioned. It is freely exercised, and it is not involved in any way in this case. In that respect there is a very grave difference, between the law of the land and the law of the sea, and a moment's reflection will show you how and why that is, and must be, so.
>
> "From time immemorial the perils of the sea have made it absolutely essential that there be some one person in command of a ship, because the lives and the safety of everyone on board, including the value of the cargo of the ship which, in these days, sometimes runs into the value of millions of dollars, is

dependent upon the wise exercise of judgment and discretion. * * *

"If the law gave sanction to the right of the crew to determine questions of policy and management of the ship, you would find very few underwriters, I expect, who would be willing to insure a ship, or a shipping line where it was known that that discipline, or lack of discipline, prevailed. You would find few passengers of discrimination and care who would be willing to sail on the lines where that kind of discipline prevailed. And the age long immemorial customs of the sea have been to the contrary, and the laws of the United States in giving them express written form do nothing more than has been proved by the experience of men for at least a thousand years". (*United States* v. *Rees, et al* (D. Md.) 1937 A. M. C. 1611, Aff'd. 95 Fed. (2d) 784).

In *Peninsular and Occidental Steamship Co.* v. *National Labor Relations Board* (C. C. A. 5th, 1938) 98 Fed. (2nd) 411, (Certiorari denied) Foster, C. J., speaking for the Court said:

"The owners of vessels, their masters and other officers, are required to exercise the highest degree of care and skill for the preservation of the lives of passengers and crews and to safely transport the cargo. This duty is superior to all other considerations in the operation of ships. Implicit obedience to the lawful orders of the master is required on a vessel. Without that there would be no safety. Engaging in sit-down strikes and taking possession of the ships, in defiance of their officers, was at least prima facie evidence that the crews were guilty of mutiny. 18 USCA Sec. 483. *Hamilton* v. *United States*, 268 Fed. 15; Cert. den. 254 U. S. 645."

Seamen who sign articles to become members of the crew of a vessel of the United States enter into a rela-

tionship which, in the nature of things, is different from that assumed by persons employed on land. Both as "wards of the admiralty" under the general maritime law and by special acts of Congress applying only to them, seamen enjoy many benefits not accorded to land workers. At the same time they must assume certain correlative duties not necessary to land occupations.

In the Economic Survey of the American Merchant Marine, the Commission said (p. 46):

> "The sea is no place for divided authority. When a man puts foot on the deck of a ship, he becomes part of a disciplined organism subject to the navigation laws of the United States."

It has been contended that the mutiny statutes do not apply unless the vessel is in actual danger and *a fortiori* there can be no mutiny in a safe harbor. This contention, not having met with success in the courts (*Rees v. United States; Hamilton v. United States*) is brought before the legislative branch of the Government in the form of the proposed amendments. The fact that a vessel may be in a safe harbor does not, under existing law, and it is submitted, should not, give sanction to the offenses covered by the mutiny statutes. It is apparent to all those familiar with the sea that no vessel is safe unless she is, among other things, manned by a competent crew which means, in short, a crew alert to its duties and responsive at all times to the lawful commands of the master. A crew which does not meet this test is not competent and must, moreover, be lacking in that morale which is necessary to the safe preservation of the ship, her passengers and cargo. Because of the human factor involved, it is difficult to see how the morale of a crew which feels that it should be free to disobey the lawful commands of the master when the vessel is not "under way on the high seas", can be revived with automatic regularity when the ship weighs anchor or crosses an imaginary line to the high seas.

What was said many years ago by Mr. Justice Woodbury in *United States* v. *Staly* is none the less true today——

> "If obedience can be required on a vessel on the high seas, at a distance from the river, it should be in the river, or at anchor and before the clearance is obtained as well as after, or all orders will be frustrated, and the due navigation and safety of the vessel rendered impossible. *U. S.* v. *Hamilton* (Case No. 15291); *U. S.* v. *Stevens* (Id. 16,394). If there be anything in the objection, it applies to the jurisdiction of this court to try the offense, when committed within the stream and port, and not on the high seas, rather than to the offense itself not having been committed at all". (Fed. Cas. No. 16,374, p. 1290).

Certainly there need be no fear, on the part of members of an orderly and competent crew, that they will run afoul of existing statutes governing discipline on board vessels of the United States. As there can be no escape from the necessities of such discipline, there should be no diminution of the authority required to meet those necessities.

The Commission is of the opinion that the proposed amendments, if enacted, would be harmful to the development of the American merchant marine and it is, accordingly, opposed to the measures.

The Commission is advised by the Acting Director of the Bureau of the Budget that there would be no objection to the submission of this report to your Committee.

Very sincerely yours,

(sgd) E. S. Land
E. S. LAND
Chairman

P. 11, 5

SUPREME COURT OF THE UNITED STATES.

No. 320.—October Term, 1941.

Southern Steamship Company, Petitioner, *vs.* National Labor Relations Board and National Maritime Union of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 6, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

Upon the petition of a union not a party to the present suit, the National Labor Relations Board ordered an election among petitioner's unlicensed employees to determine their collective bargaining representative. The elections were held on board seven of petitioner's vessels during October, 1937. In the case of the election on board the S.S. *City of Houston*, the labor organizations involved objected to the presence of any representative of the petitioner during the voting, and consequently none was admitted by the Board. No such objection was raised with respect to the subsequent balloting, and petitioner's representatives were present while the vote was taken on board the remaining six vessels. The National Maritime Union obtained a clear majority of all the votes cast. Because of the exclusion of its representative from the voting on the S.S. *City of Houston*, petitioner objected to the certification of the N. M. U. as the exclusive bargaining representative of the employees in the unit. On January 26, 1938, the Board rejected petitioner's contention, and issued a certification order. 4 N. L. R. B. 1140.

Six months later, on July 26, the N. M. U. filed charges against petitioner, which it amended on November 22. On November 23, the Board issued a complaint in which it accused petitioner of violations of Sections 8(1), (3) and (5) of the National Labor Relations Act. U. S. C., Title 29, Section 158(1), (3), (5). The allegations of the complaint were that the N. M. U. had been certified in January as exclusive bargaining representative, that

petitioner had consistently refused since that time to bargain with the Union, that as a result of this refusal to bargain a strike had occurred on July 18 aboard petitioner's S.S. *City of Fort Worth* while docked at Houston, Texas, that upon the *City of Fort Worth's* return to Philadelphia on July 25 five members of the crew[1] were discharged because of their membership and activity in the Union and particularly because of their participation in the strike, and that as a result of these discharges other members[2] of the crew of the *Fort Worth* had gone on strike while the vessel was at home dock in Philadelphia. In its answer to this complaint, petitioner generally denied these allegations and chiefly contended: first, that it had been under no obligation to bargain with the N. M. U. because the Board's refusal to permit petitioner to be represented at the election aboard the S.S. *City of Houston* rendered the entire certification proceedings void; and second, that the discharge of the five members of the *City of Fort Worth* was not an unfair labor practice because it was based upon their misconduct in striking on July 18 while under Shipping Articles, away from home port, and on board ship.

After the usual proceedings, on April 22, 1940, the Board issued its findings of fact, conclusions of law, and order. 23 N. L. R. B. 26. Its findings, which must be set out in some detail, follow:

After the election and the certification of the N. M. U. in January, 1938, the Union made persistent efforts through its representatives to arrange a bargaining conference with officials of the petitioner. Every such attempt was frustrated by the latter, who refused even to answer the requests until August. In that month the Union was notified that petitioner would not undertake to bargain with it "until the validity of the Board's certification was settled by the Board and the courts."

On July 17, while the *City of Fort Worth* was docked at Houston, thirteen unlicensed members of the crew met in a union hall. They decided to strike the next day to compel petitioner to recognize the Union and to issue to the Union's shore delegates the passes without which they could not board petitioner's vessels. At 8 o'clock the following morning the strike began. One of the men, Tracey, failed to turn the steam "on deck" for use in loading the cargo. He was then asked by the first assistant engineer why he

[1] Warren, Tracey, Pfuhl, Smith and Ferguson.

[2] Crassavaz, Reeves, Lathan, Burns, Hughes, Neeley and Holt.

had failed to do so, and answered that a strike was on, explaining the strikers' demands. When the first assistant engineer turned on the steam himself, Tracey persuaded Braun, the fireman, to leave his post. And Ferguson, who came on duty just at that moment to replace Braun as fireman, also refused to tend the fires. The second assistant engineer then undertook to tend the fires himself, and Tracey, Ferguson and Braun went to the poop deck where the rest of the strikers were sitting. The poop deck is the usual meeting place of the crew when not on duty.

From that time until evening the strikers sat quietly by, engaging in no violence and not interfering with the officers of the ship or the non-striking members of the crew who proceeded with the loading of the cargo. The strikers did not "claim to hold the ship in defiance of the right of possession of the owner".[3] But when the captain ordered them to return to work, they refused. They continued to refuse after a deputy United States Shipping Commissioner came aboard and read to them that provision of their shipping articles in which they had promised "to be obedient to the lawful commands" of the master. Late in the afternoon, although he had not been authorized to do so, petitioner's attorney in Houston promised the Union's attorney in that city that he would meet with the latter during the following week to negotiate an agreement and that he would recommend to petitioner that passes be granted to shore delegates. As a result of this promise, the strike was ended at about 7 p. m. and the ship sailed on schedule at about 9 p. m.

The return voyage to Philadelphia was marked by no further difficulty. However, during the course of it the captain decided not to reship five of the strikers.[4] When the ship reached port on July 25 and the men signed off the shipping articles, these five were informed that they would not be reshipped. Most of them had been members of the *City of Fort Worth's* crew continuously

[3] The Board found that the strikers were at no time ordered to leave the ship. It is true that three of the officers testified that they had neither given nor heard any of the officers give such an order. But despite a great reluctance to overturn a finding on such a pure matter of fact, we cannot square it with the affirmative and uncontradicted testimony of Tracey, one of the strikers, that petitioner's agent in Houston boarded the ship at least four times during the day, at least once in the company of the Captain, ordered the strikers to leave the ship within the next half hour, and announced that he was going to bring on a new crew (R. 140-141, 161-162).

[4] See note 1, *supra*.

for a considerable length of time.[5] It was the custom of petitioner to have the seamen sign new articles for the next voyage when signing off the old, but even when this was not done the men considered themselves employed for the next voyage unless notified to the contrary. Under these circumstances the Board found that the five men in question had actually been discharged and that their employment had not simply ended as of course when the shipping articles expired. Seven[6] of the other men who had engaged in the Houston strike immediately struck again in protest against the discharge of their fellows. On the basis of this evidence the Board found that both the strike at Houston on July 18 and the strike at Philadelphia on July 25 were caused by petitioner's unfair labor practices. And it made a specific finding with respect to each of the five men that the discharge was based upon participation in the Houston strike. It concluded that petitioner had interfered with its employees' right to organize and bargain collectively, in violation of § 8(1); that it had discriminated with regard to tenure of employment, in violation of § 8(3); and that it had refused to bargain with the authorized representative of its employees, in violation of § 8(5).

Consequently, it ordered petitioner to cease and desist: (a) from discouraging membership in the N. M. U. or any other labor organization by discriminating in regard to employment; (b) from refusing to bargain collectively with the N. M. U.; and (c) from interfering with, restraining, or coercing its employees in any way in the exercise of their right to organize and bargain collectively. In addition, and "in order to effectuate the policies of the Act," the order included the following affirmative requirements: (a) that petitioner bargain with the N. M. U.; (b) that it reinstate with back pay the five men discharged; (c) that, upon application, it offer immediate reinstatement to the July 25th strikers; and (d) that it post notices of its intention to conform to this order.

Petitioner sought to have this order set aside by the Circuit Court of Appeals. The Circuit Court, however, sitting *en banc*, and with one judge dissenting, entered a decree enforcing the

[5] The Board's finding on this matter was that "Tracey had been employed continuously over a period of 16 months, Ferguson for a period of 1 year, Pfuhl over a period of 8 months, Warren over a period of 6 weeks, and Smith over a period of 18 months. Each round-trip voyage of the *City of Fort Worth* is scheduled to take about 25 days." (R. 27.)

[6] See note 2, *supra*.

order with a single minor modification.[7] 120 F. 2d 505. We granted certiorari because of the importance of the matters involved, and because of an asserted conflict with decisions of this Court and of other Circuit Courts of Appeal.

Petitioner's contentions in this Court are: (1) that the refusal by the Board to permit a company representative aboard the S.S. *City of Houston* during the voting vitiated the entire election and certification proceeding and absolved petitioner of any duty under the Act to bargain with the N. M. U.; (2) that the employment of the seamen involved automatically terminated when they signed off the shipping articles in Philadelphia, so that they cannot be said to have been "discharged"; and (3) that participation in the Houston strike by the discharged seamen was misconduct of such a character that the Board cannot order their reinstatement.

The first two of these arguments are without substance. The Board enjoys a wide descretion in determining the procedure necessary to insure the fair and free choice of bargaining representatives by employees. *N. L. R. B.* v. *Waterman Steamship Corporation*, 309 U. S. 206, 226; *N. L. R. B.* v. *Falk Corporation*, 308 U. S. 453, 460. It is wholly reasonable to remove any possibility of intimidation by conducting the election in the absence of the employer's representatives. With respect to whether the five men in question were actually discharged upon the ship's return to Philadelphia, petitioner concedes that the formal signing off of the shipping articles was not conclusive. The tenure of their employment must be determined in the light of all the evidence concerning petitioner's employment customs and practices. *N. L. R. B.* v. *Waterman Steamship Corp.*, 309 U. S. 206, 218. The argument here therefore comes to this, that this record does not warrant a finding that the tenure of employment survived the termination of the shipping articles. An examination of the record convinces us that the concurrent finding of the Board and the Circuit Court on this question should not be disturbed.

The situation, then, is one in which an employer indulges in an unfair labor practice, a strike results, and several men are dis-

[7] The Board's order permitted petitioner to deduct from the back pay due any amounts that the discharged men might have earned during the period in question, but required it to reimburse any public work relief agency for sums paid to any of the men during that time. The latter phase of the order was eliminated by the Circuit Court of Appeals on the authority of Republic Steel Corp. v. National Labor Relations Board, 311 U. S. 7. The Board raises no objection to this modification of its order.

charged for participating in the strike. If there were no more to the case, and the Board found that it would serve to effectuate the policies of the Act to reinstate the strikers, an order requiring reinstatement would undoubtedly be enforceable. *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. 2d 167. But there is more to this case. The strike was conducted by seamen on board a vessel and away from home port. The question is whether this circumstance renders it an abuse of discretion for the Board to order the reinstatement of the strikers. We think that it does.

Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care. Every one and every thing depend on him. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized. On the one hand, it has imposed numerous prohibitions against conduct by seamen which destroys or impairs this authority. We shall consider in a moment the nature and scope of the criminal sanctions imposed in case of revolt and mutiny. But it is worth noting here that the form of the "shipping articles" which the master and every member of the crew must sign prior to the voyage has been carefully prescribed by Congress, and that these articles contain this promise: "And the said crew agree . . . to be obedient to the lawful commands of the said master . . . and their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore . . ." U. S. C., Title 46, §§ 564, 713. On the other hand, workers at sea have been the beneficiaries of extraordinary legislative solicitude, undoubtedly prompted by the limits upon their ability to help themselves. The statutes of the United States contain elaborate requirements with respect to such matters as their medicines, clothing, heat, hours and watches, wages, and return transportation to this country if destitute abroad. U. S. C., Title 46, §§ 651-692, 1131. It is in this setting of fact and law that we must test the validity of the Board's order of reinstatement.

Petitioner contends that the strike aboard the *City of Fort Worth* at the dock in Houston was mutiny and violated Sections 292 and 293 of the Criminal Code. Those sections provide:

§ 292. Inciting revolt or mutiny on shipboard. Whoever, being of the crew of a vessel of the United States, on the high seas, or

any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such a revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1000 or imprisoned not more than five years or both. (U. S. C., Title 18, § 483).

§ 293. Revolt or mutiny on shipboard. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than $2000 and imprisoned not more than ten years. (U. S. C., Title 18, § 484).

The Board's defense to this contention is two-fold. It argues, first, that the conduct of the strikers did not violate either of these sections, and, second, that even if it did the violation does not bar their reinstatement.

First. We think that the strike aboard the *City of Fort Worth* on July 18 was in violation of §§ 292 and 293. It may hardly be disputed that each of the strikers resisted the captain and other officers in the free and lawful exercise of their authority and command, within the meaning of § 293, or that they combined and conspired to that end, within the meaning of § 292. Deliberately and persistently they defied direct commands to perform their duties in making ready for the departure from port. It is true that they did not engage in violence or prevent the other men and officers from proceeding with preparations for the voyage.[8] But short of that, they did what they could to prevent the ship from sailing. In the words of the striker Tracey, had they not believed that their demands had been satisfied, "we would still be sitting

[8] It should be noted, however, that according to the second assistant engineer's testimony, when he told Tracey that he intended to put the steam on deck himself, Tracey replied, "You had better not. You will be sorry." No effort was made to carry out this threat.

there". There is no doubt that they undertook to impose their will upon the captain and officers.

None of these facts is denied by the respondents or by the Circuit Court.[9] Indeed it is admitted that had the strike occurred on the high seas, the participants would have been guilty of mutiny. But a distinction is said to lie between strikes at sea and at dock. To determine the validity of this distinction we turn first to the words of the statute. They are plain enough: "Whoever, being of the crew of a vessel of the United States, on the high seas, *or on any other waters within the admiralty and maritime jurisdiction of the United States*", etc. It has long been settled that the admiralty and maritime jurisdiction of the United States includes all navigable waters within the country. *The Genesee Chief*, 12 How. 443.[10] The water in the harbor of Houston is certainly navigable, and a boat at dock there is obviously within the territorial limits of the United States. The words of the statute alone, therefore, do not warrant an exception in the case of a vessel situated as the *City of Fort Worth* was when the strike occurred.

Nor are we referred to the decision of any court in which such an exception has been implied. Under the original Mutiny Act of 1790,[11] Justice Story held without hesitation that a refusal to work while a vessel was in an American harbor was a violation of the statute.[12] The act of 1790 was supplanted in 1835 by a statute which, with only minor changes, now appears as Sections 292 and 293 of the Criminal Code, set out above.[13] Since 1835, whenever the question has arisen, the courts have held that a mutiny may occur in a harbor, either foreign or domestic, as well

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[9] The Board did not consider the question of whether the strike amounted to mutiny.

[10] On the jurisdiction of the United States over men and vessels in foreign waters, see United States v. Flores, 289 U. S. 137; United States v. Roberts, 27 Fed. Cas. No. 16,173 (C. C. S. D. N. Y. 1843).

[11] 1 Stat. 112, §§ 8 and 12.

[12] United States v. Hamilton, 26 Fed. Cas. No. 15,291 (C. C. D. Mass. 1818) (the report of this case is not altogether clear on whether the ship was at anchor in Salem Bay or tied to a dock there, but the former seems to have been the case); United States v. Gardner, 25 Fed. Cas. No. 15,188 (C. C. D. Mass. 1829) (this report also fails to reveal the exact situation of the vessel in Boston harbor at the time of the strike, but it is possible that it was moored to the dock since Boston was its home port and it was "all ready for sea", and presumably the loading had just been completed).

[13] 4 Stat. 775, 776.

as at sea.[14] It is true, however, that in none of these cases does it expressly appear that the vessel was tied to a dock as was the *City of Fort Worth* in this case. And in the *Rees* case, the court specifically reserved the question of whether the Mutiny Act bars a strike on board a vessel so situated. 95 F. 2d 784, at 792.

It was therefore strictly accurate for the Circuit Court of Appeals to observe that "the question of the right of seamen to strike under the circumstances of the case before us is still an open one." On this assumption, however, it proceeded to conclude that the necessity for absolute authority in the master is so considerably diminished when the ship is moored in a "safe" port that a strike in such circumstances should not be held to violate the Act. This theory has been regarded with favor by a number of courts and commentators[15] and is said to conform more closely to changed conceptions with respect to the freedom of workers on land or sea to organize, to bargain, and to use economic weapons to enforce their demands.

The difficulty with the contention is that it ignores the plain Congressional mandate that a rebellion by seamen against their officers on board a vessel anywhere within the admiralty and maritime jurisdiction of the United States is to be punished as mutiny. If this mandate is to be changed, it must be changed by Congress and not by the Courts. If further proof be needed of a Congressional belief that the requirements of discipline during a voyage do not vary with each change in circumstance, it may be found in the shipping articles to which we have already referred. For in those articles the members of the crew are obliged to promise to obey lawful commands "whether on board, in boats, or on shore". And before a seaman's certificate is issued by the Bureau of Marine Inspection and Navigation the applicant must take an oath to " . . . carry out the lawful orders of my

[14] United States v. Cassedy, 25 Fed. Cas. No. 14,745 (C. C. D. Mass. 1837); United States v. Lynch, 26 Fed. Cas. No. 15,648 (C. C. S. D. N. Y. 1843); United States v. Roberts, 27 Fed. Cas. No. 16,173 (C. C. S. D. N. Y.) 1843); United States v. Staley, 27 Fed. Cas. No. 16,374 (C. C. D. R. I. 1846) (at anchor in the Providence River); United States v. Nye, 27 Fed. Cas. No. 15,906 (C. C. D. Mass. 1855); Hamilton v. United States, 268 F. 15; Rees v. United States, 95 F. 2d 784; United States v. Albers, 115 F. 2d 833.

[15] See *The Blake*, 1 W. Rob 73, 166 Eng. Rep. 500; Buddington v. Smith, 13 Conn. 334; Sapiro and Frank, *Mutiny at the Dock*, 25 Cal. L. Rev. 41; Rothschild, *The Legal Implications of a Strike by Seamen*, 45 Yale L. J. 1181; Decision, 38 Col. L. Rev. 1294. But see McLaughlin, Note, 18 Ore. L. Rev. 128; Note, *Labor Disputes in the Merchant Marine*, 28 Va. L. Rev. 79.

superior officers on shipboard."[16] The lower court expressed the opinion, "Upon reason, however, there is no sound basis for depriving seamen of this right [to strike] when as here their vessel is moored to the dock in a safe domestic port." But the soundness or unsoundness of the reasoning is for the determination of Congress. As recently as 1939 two bills were introduced in the House of Representatives for the purpose of limiting the scope of Sections 292 and 293 to vessels "under way on the high seas". H. R. 3427, 3428, 76th Congress, 1st Session. The United States Maritime Commission communicated to the House Committee on Merchant Marine and Fisheries its firm objection to the measures,[17] and they were never enacted. When the legislative purpose is so plain, we cannot assume to do that which Congress has refused to do.

In any event, a sweeping requirement of obedience throughout the course of a voyage is certainly not without basis in reason. The strategy of discipline is not simple. The maintenance of authority hinges upon a delicate complex of human factors, and Congress may very sensibly have concluded that a master whose orders are subject to the crew's veto in port cannot enforce them at sea. Moreover, it is by no means clear that a ship moored to a dock is "safe" if the crew refuses to tend it, as the strikers did at Houston. At the very least, steam must be maintained to provide

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[16] See current "Application for Seaman's Certificate", issued by Shipping Section, Bureau of Marine Inspection and Navigation, Department of Commerce. And see also U. S. C., Title 46, § 672(g).

[17] Letter to the Committee dated March 27, 1939 and signed by the Chairman of the Commission, Emory S. Land:

"Under date of February 1, 1939, you requested the views and recommendations of the Commission with respect to H. R. 3427 and H. R. 3428.

. . . . . .

"The proposed bills would emasculate the present laws in respect of revolt or mutiny on shipboard. No conduct by members of the crew of a vessel of the United States would constitute a violation of the statutes unless the vessel were under way on the high seas and then only if actual force as distinguished from the lesser degrees of revolt or mutiny involving use of fraud or intimidation were used against the commanding officer. Moreover, the proposed amendments would reduce the maximum penalties by seventy-five per cent.

"It is the Commission's considered opinion that there is no reason which would justify the Congress in lessening the authority of the masters on board vessels of the American merchant marine.

. . . . . .

"The crimes of endeavoring to incite to revolt or mutiny, or actually accomplishing revolt or mutiny, may be committed 'on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United

light and fire protection.[18] The damage to the *Normandie* is grim enough proof that the hazard of fire is ever present.[19] It is not enough to say that in the case before us the strikers did not prevent these precautions from being taken; only the efforts of others averted the dangers to which they opened the door.

States'. It is well settled that this includes all such offenses committed on the vessels of the United States on navigable waters, including the ports, rivers and harbors of foreign countries. (United States *v.* Flores, 289 U. S. 137.)

. . . . . .

'Seamen who sign articles to become members of the crew of a vessel of the United States enter into a relationship which, in the nature of things, is different from that assumed by persons employed on land. Both as 'wards of the admiralty' under the general maritime law and by special acts of Congress applying only to them, seamen enjoy many benefits not accorded to land workers. At the same time they must assume certain correlative duties not necessary to land occupations.

"In the Economic Survey of the American Merchant Marine, the Commission said (p. 46):

'The sea is no place for divided authority. When a man puts foot on the deck of a ship, he becomes part of a disciplined organism subject to the navigation laws of the United States.'

"It has been contended that the mutiny statutes do not apply unless the vessel is in actual danger and *a fortiori* there can be no mutiny in a safe harbor. This contention, not having met with success in the courts (Rees *v.* United States; Hamilton *v.* United States) is brought before the legislative branch of the Government in the form of the proposed amendments. The fact that a vessel may be in a safe harbor does not, under existing law, and it is submitted, should not, give sanction to the offenses covered by the mutiny statutes. It is apparent to all those familiar with the sea that no vessel is safe unless she is, among other things, manned by a competent crew which means, in short, a crew alert to its duties and responsive at all times to the lawful commands of the master. A crew which does not meet this test is not competent and must, moreover, be lacking in that morale which is necessary to the safe preservation of the ship, her passengers and cargo. Because of the human factor involved, it is difficult to see how the morale of a crew which feels that it should be free to disobey the lawful commands of the master when the vessel is not 'under way on the high seas', can be revived with automatic regularity when the ship weighs anchor or crosses an imaginary line to the high seas.

. . . . . .

"Certainly there need be no fear, on the part of members of an orderly and competent crew, that they will run afoul of existing statutes governing discipline on board vessels of the United States. As there can be no escape from the necessities of such discipline, there should be no diminution of the authority required to meet those necessities.

"The Commission is of the opinion that the proposed amendments, if enacted, would be harmful to the development of the American merchant marine and it is accordingly, opposed to the measures.

"The Commission is advised by the Acting Director of the Bureau of the Budget that there would be no objection to the submission of this report to your Committee."

[18] Memorandum to Ship Operators dated December 10, 1941, Bureau of Marine Inspection, Department of Commerce.

[19] N. Y. Times, Feb. 10, 1942, p. 1, col. 8.

We conclude that the Circuit Court of Appeals erred in holding that the strike at Houston did not violate Sections 292 and 293.

Second. Assuming that the strike did violate these sections, the Board contends that the reinstatement provisions of its order were nevertheless valid. Section 10(c) of the National Labor Relations Act permits the Board to require an employer who has committed an unfair labor practice to take "such affirmative action, including reinstatement of employees . . ., as will effectuate the policies of the Act." This authorization is of considerable breadth, and the courts may not lightly disturb the Board's choice of remedies. But it is also true that this discretion has its limits, and we have already begun to define them. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7. A complete definition of course was not and could not have been attempted in those cases. Nor will it be attempted here. It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

This was the kind of consideration for which the present case called. To bolster its claim that it responded to this call, the Board relies upon what it asserts to have been the "technical" nature of the violation of §§ 292 and 293. Specifically, it points to the comparative safety of the ship when moored to the dock, the absence of violence, and the double character of the ship as the strikers' place of employment and their home during the course of the voyage. While we have no doubt that the danger to the vessel was considerably less than it would have been had the strike occurred at sea, we have already indicated that it was certainly present and that considerations other than immediate danger to the ship require maintenance of discipline throughout the voyage. Likewise, the absence of violence was a fortunate feature of the affair, but the flouting of the captain's authority was nevertheless deliberate and complete. Finally, for these strikers to remain aboard the ship was indeed an act of very different significance

than for strikers at an industrial plant to remain inside a factory. But in one respect at least the comparison is unfavorable to the strikers here. As a practical matter, the *City of Fort Worth* was definitely wrested from the control of its officers. In an industrial plant the employer is confronted only with the necessity of placing new men at the machines. But under the law petitioner was required to furnish living quarters to any new crew whom it might have hired for the return voyage to Philadelphia. This meant the removal of the strikers from their quarters as well as their posts of duty. It is difficult to imagine that they would have surrendered their jobs and their quarters without a struggle. They asserted their right to occupy the quarters and to eat the food which the master was required to furnish them as members of the crew and yet to refuse to work or to obey his orders. See *United States* v. *Albers*, 115 F. 2d 833, at 836. In fact, as we have noted, they intended, according to the witness Tracey, to "still be sitting there" if petitioner had not capitulated to their demands.

We cannot ignore the fact that the strike was unlawful from its very inception. It directly contravened the policy of Congress as expressed in §§ 292 and 293, and it was more than a "technical" violation of those provisions. Consequently, and despite the initial unfair labor practice which caused the strike, we hold that the reinstatement provisions of the order exceeded the Board's authority to make such requirements "as will effectuate the policies of the Act".[20]

It should be stressed that the view we have taken does not prevent the redress of grievances under the Act. At any time following the certification of the N. M. U. in January, 1938, the union and the Board could have secured the assistance of the courts in forcing petitioner to bargain. The importance of seeking such assistance promptly is strikingly illustrated in this case.[21]

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[20] Cf. Peninsular & Occidental S.S. Co. v. National Labor Relations Board, 98 F. 2d 411, 414.

[21] We do not question the Board's finding that petitioner refused to bargain with the N. M. U. after January 26, 1938. But the findings and the record indicate that the union was not markedly diligent. The Board found that one request for a conference was made by a union representative at Houston "shortly after the certification". "In late January or early February", the union's business agent in Philadelphia made a similar request. He renewed it "about the middle of February". "During the next month" he made two attempts to repeat his request by telephone. From that time until August 18, a month after the strike at Houston, he made only one other attempt, the date of which he was unable to fix.

Had the union and the Board done so, the unfortunate occurrence at Houston might have been averted. And what is more, nothing that we have said would prevent the union from striking, picketing or resorting to any other means of self-help, so long as the time and place it chooses do not come within the express prohibition of Congress.

The case is remanded to the Circuit Court of Appeals with instructions to limit its decree of enforcement to those provisions of the Board's order requiring petitioner to bargain with the N. M. U. and to post notices to that effect, but to eliminate the other provisions of the order.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 320.—October Term, 1941.

Southern Steamship Company, Petitioner, *vs.* National Labor Relations Board and National Maritime Union of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 6, 1942.]

Mr. Justice Reed, dissenting.

To support its judgment of reversal this Court relies upon the employees' violation of §§ 292 and 293 of the Criminal Code as justification for the Steamship Company's discharge of its seamen. If the seamen were discharged not for labor activity but because of the commission of serious crime, *Labor Board* v. *Fansteel Corp.*, 306 U. S. 240, would be authority for the Court's holding. It was there decided that § 2(3) of the Labor Act did not preserve a striker's eligibility for reinstatement by the Board under § 10(c), if the striker was discharged for reasons other than "union activity or agitation for collective bargaining," e. g., criminal acts. 306 U. S. at 255. The Court recognizes that where "an employer indulges in an unfair labor practice, a strike results, and several men are discharged for participating in the strike," and nothing more appears, the Labor Board may properly reinstate the strikers. It concludes, however, that where the strike provoked by the unfair practices is itself unlawful, the Board, regardless of the circumstances, loses its power to reinstate after discharge. This position, we think, unduly expands judicial review of the Board's discretionary power of reinstatement under §10(c) and is not supported by the *Fansteel* decision.

This Court recognized in the *Fansteel* case that the Board had discretion over reinstatement. 306 U. S. 258. It was thought that however wide that discretion might be, "its limits were transcended" in that case. The ninety-five men in *Fansteel* were discharged "for the seizure and retention of the buildings." 306 U. S. 252. But those men held the buildings from February 17 until February 26. They disobeyed a court injunction order to surrender the factory, and successfully resisted by force the sheriff's

efforts to enforce it. Only on his second attempt, with an increased number of deputies, did the sheriff accomplish their eviction and arrest. 306 U. S. 248-49.

Nothing approaching such disorder occurred here. The seamen's conduct did not affect the safety of the vessel. The only evidence of violation of the statutes is that the orders to load were ignored. We may assume, for this dissent, that this resulted in a violation of the criminal statutes. The Board found that the respondent refused to bargain collectively with the Union, that primarily this precipitated the strike, and that the respondent was not warranted in discharging any employee solely because of the strike. It further found that the strikers did not hold the ship in defiance of the owner nor did they trespass. The Board found in each instance that the discharges were not for disobeying orders but for striking, for peacefully, albeit unlawfully, resorting to self-help in retaliation against denial of their rights.[1] On the basis of these findings, supported by substantial evidence, the Board exercised its discretion to reinstate these men.

We think that under these circumstances, it acted within its authority. We can see no justification for an iron rule that a discharge of a striker by his employer for some particular, unlawful conduct in furtherance of a strike is sufficient to bar his reinstatement as a matter of law. *Fansteel* teaches that there are extremes of conduct which leave no discretion to the Board. We think that the acts here fall on the other side of the line and that the Circuit Court of Appeals properly so determined.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice MURPHY concur in this dissent.

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1 "The evidence is plain that both Tracey and Ferguson were discharged because of the leading parts they played in the strike. Chief Engineer Norton testified that he did not recommend Ferguson's discharge merely because he had disobeyed orders. 'I would have overlooked that had he taken the fires until we got straightened out.' Captain Rudan testified that he discharged both these men upon Norton's complaint that 'they had been on watch at the time of the commencement of this what I consider disobedience, and if they had gone on watch at the time, that the rest of the men probably would have followed. . . .'

"Captain Rudan's testimony makes it abundantly clear that the motivating factor in the respondent's decision to discharge Pfuhl was his participation in the strike. . . .

"We entertain no doubt that an employee's intoxication provides ample reason for his discharge. We believe, however, that the respondent did not discharge Warren for this reason, but rather that it seized upon his drinking proclivities to rid itself of an active union officer. . . .

"On cross-examination Sherry admitted that Smith was discharged because of his participation in the strike. . . ."